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10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 UNITED STATES OF AMERICA, ) CR No. 06-530 (A) -FMC  
13 Plaintiff, )  
14 v. )  
15 JULIE DIAZ, et al., )  
16 Defendants. ) Sent. Date: November 24, 2008  
17 ) Sent. Time: 2:00 p.m.  
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Plaintiff United States of America, through its counsel of record, the United States Attorney for the Central District of California, hereby submits its memorandum regarding sentencing of defendant Greg Wong ("Wong"), in which the government also replies to defendant Wong's sentencing position filed on October 24, 2007.

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The government respectfully requests the opportunity to supplement its position as may become necessary.

DATED: November 10, 2008

Respectfully submitted,

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## TABLE OF CONTENTS

PAGE	
2	TABLE OF AUTHORITIES . . . . . iii
3	
4	
5	I. INTRODUCTION . . . . . 1
6	
7	II. FACTS . . . . . 2
8	
9	A. <u>The Department of Education Student Grant Programs</u> . 2
10	
11	B. <u>Institutions And Related Entities</u> . . . . . 2
12	
13	C. <u>The Defendant And Coconspirators</u> . . . . . 3
14	
15	D. <u>The Scheme to Misapply Education Grant funds</u> . . . . 4
16	
17	
18	III. DISCUSSION . . . . . 7
19	
20	A. <u>THE GOVERNMENT CALCULATES THE SENTENCING GUIDELINES TO</u>
21	<u>INCLUDE AN ADDITIONAL DOWNWARD DEPARTURE OF TWO OFFENSE</u>
22	<u>LEVELS FOR OVERSTATEMENT OF LOSS</u> . . . . . 7
23	
24	B. <u>APPLICATION OF THE STATUTORY SENTENCING FACTORS</u> . . . 8

1 TABLE OF CONTENTS (CONTINUED)

	PAGE
2	PAGE
3	
4 C. <u>DEFENDANT WONG'S REQUESTS FOR DEPARTURES OR LENIENCE</u>	
5 <u>LACK A FACTUAL BASIS IN THE RECORD, OR DO NOT</u>	
6 <u>CONSTITUTE EXCEPTIONAL CIRCUMSTANCES</u> . . . . .	9
7	
8     1. Loss of Time Between Crimes . . . . .	9
9     2. Aberrant Behavior . . . . .	10
10    3. To Enable Defendant To Make Restitution . . .	10
11    4. Excellent Employment History . . . . .	10
12    5. Defendant Responsible for Only Part of Loss .	11
13    6. Defendant Subject to Abuse In Prison . . . .	11
14    7. Totality of the Circumstances and Sua Sponte	
15     Departures . . . . .	11
16	
17 IV. CONCLUSION . . . . .	12
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

1 TABLE OF AUTHORITIES  
2

3 STATUTES	4	5 PAGE (S)
6 18 U.S.C. § 371 . . . . .	7	8 . . . . . 1
9 18 U.S.C. § 3553(a) . . . . .	10	11 . . . . . 8, 11

I.

## INTRODUCTION

3       Defendant Greg Wong ("Wong") is to be sentenced for one  
4 count of conspiracy to commit federal education funding fraud, in  
5 violation of 18 U.S.C. § 371, in connection with millions of  
6 dollars in fraudulent education grants procured from the United  
7 States Department of Education ("DOE").

8 The government calculates the United States Sentencing  
9 Guidelines as follows:

10 Base Offense Level : 6 [U.S.S.G. § 2F1.1(a)]

### Specific Offense Characteristics

13 Loss (more than \$2,500,000) : +13 [U.S.S.G. § 2F1.1(b)(1)(N)]

14 More than minimal planning : +2 [U.S.S.G. § 2F1.1(b)(2)]

## Adjustments

17 Acceptance of Responsibility : -3 [U.S.S.G. §3E1.1 (b)]

18 In addition, the government does not oppose a downward  
19 departure of two offense levels for overstatement of loss.  
20 Except for the issue of "abuse of trust," where the government  
21 seeks no enhancement, these sentencing calculations are in accord  
22 with the guidelines calculations of the Pre-Sentence Report  
23 ("PSR") for defendant Wong, which defendant Wong has not  
24 disputed. The government's calculations result in a total  
25 offense level of 16 that, combined with a Criminal History  
26 Category of I, result in a sentencing range of 21 to 27 months.

1       Based on the statutory sentencing factors, discussed below,  
2 the government believes that a sentence at the low end of the  
3 guidelines is appropriate.

II.

## FACTS

6 The following summary of facts about the scheme is adopted  
7 from the factual basis to defendant Wong's plea agreement.

## 8 A. The Department of Education Student Grant Programs

9       The federal government, through the DOE, provides financial  
10 aid funds to students. Federal financial aid funds provided to  
11 students include outright grants, that is, federal funds that a  
12 student does not have to repay – including Pell Grants and  
13 Supplemental Educational Opportunity Grants (collectively  
14 "Education Grants"). In order to be awarded Education Grant  
15 funds, a student must be enrolled in an eligible program at an  
16 eligible institution (and must also demonstrate individual  
17 financial need). DOE certifies institutions and programs as  
18 eligible if DOE determines that the institutions and programs  
19 meet certain criteria set forth in the Code of Federal  
20 Regulations. Education Grants are sent to the educational  
21 institution that an aid-eligible student is attending and  
22 deposited into an escrow account that the school must use only  
23 for transactions involving financial aid funds.

## 24 | B. Institutions And Related Entities

25 San Gabriel Polytechnic, doing business as ("d.b.a.")  
26 California Business Institute ("CBI"), was an institution located

1 in El Monte, California. CBI was eligible to receive Education  
2 Grant funds from approximately May 7, 1987 until it lost its  
3 eligibility on approximately November 7, 2001.

4 United Computer College, Inc., d.b.a. United Education and  
5 Computer College ("UECC"), was an institution located in Los  
6 Angeles, California. UECC was eligible to receive Education  
7 Grant funds from approximately March 27, 1996 until it lost its  
8 eligibility on approximately August 17, 1998.

9 Global Consulting Services ("Global") was an entity  
10 associated with UECC. Global was formed to conceal the receipt  
11 by UECC of Education Grant funds from CBI.

12 Mesa Institute ("Mesa") was an institution located in  
13 Orange, California. Mesa never was eligible to receive Education  
14 Grant funds.

15 Max Affiliates was an entity associated with Mesa. Max  
16 Affiliates was formed to conceal the receipt by Mesa of Education  
17 Grant funds from CBI.

18 C. The Defendant And Coconspirators

19 Defendant Wong was the owner and Chief Executive Officer of  
20 CBI from in or before 1998 until approximately November 2001.

21 Coconspirator Julie Diaz ("coconspirator Diaz") was the  
22 Financial Aid Officer at CBI from approximately October 1998  
23 until approximately September 2001. During this time, defendant  
24 was also employed part-time at UECC.

25 Coconspirator Deanne Kay Williams ("coconspirator Williams")  
26 was a financial aid consultant for CBI from in or before October  
27

1 1998 until 2001, and was also a paid consultant at UECC and Mesa.

2 Coconspirator Lanny Paul Nichols ("coconspirator Nichols")  
3 was the owner and director of Mesa and was the director of CBI  
4 from approximately October 1998 until approximately July 2001.

5 Coconspirator H.S.Y. ("coconspirator H.S.Y.") was the owner  
6 of UECC from in or before 1998 until in or after September 2001.

7 D. The Scheme to Misapply Education Grant funds

8 Beginning in about October 1998, and continuing until around  
9 September, 2001, defendant Wong and coconspirators Diaz,  
10 Williams, H.S.Y., and Nichols, and others agreed to and did carry  
11 out a scheme to enable UECC and Mesa students to obtain Education  
12 Grant Funds to be paid to UECC and Mesa, even though UECC and  
13 Mesa were not eligible to receive Education grant funding. The  
14 scheme in essence was to be carried out by falsely making it  
15 appear to DOE that UECC and Mesa students were attending CBI and,  
16 thus, were eligible to receive Education Grant funds. Defendant  
17 Wong and the other coconspirators knew that the students were not  
18 attending CBI and that the scheme was illegal.

19 Defendant Wong and coconspirators Diaz, Williams, and  
20 Nichols operated, and assisted in operating, CBI and made sure  
21 CBI remained eligible to receive Education Grant funds from DOE.

22 On August 18, 1999 coconspirator Julie Diaz sent a letter to  
23 defendant Wong outlining a plan to cover up the receipt of  
24 education grant funds by CBI for UECC students.

25 Defendant Wong and coconspirators Williams, H.S.Y., and  
26 Nichols created and maintained a written contract between CBI and

1 UECC, under which CBI would pay UECC to provide classes to CBI  
2 students. In doing so, however, the conspirators knew that, in  
3 fact, UECC would not be providing classes to CBI students and  
4 that the contract would falsely make it appear that CBI would be  
5 making payments to UECC that were legitimate and consistent with  
6 DOE regulations. Defendant Wong and coconspirators Nichols and  
7 Williams created a similar contract for the same reason between  
8 CBI and Mesa.

9       Defendant Wong and coconspirators Diaz, Nichols, Williams,  
10 and H.S.Y. recruited and enrolled students at Mesa and UECC and  
11 arranged for FAFSA applications for Education Grant funds to be  
12 submitted to DOE that would falsely state to DOE that students  
13 attending UECC and MESA were attending CBI. In filling out the  
14 applications, students sometimes were asked to leave blank the  
15 identity of the institution. Coconspirator Diaz and others then  
16 would enter CBI's name or institution code onto the FAFSA  
17 applications. On other occasions, UECC and Mesa students were  
18 told to write in the identifying information for CBI.  
19 Coconspirator Diaz and others would request through RGM that DOE  
20 disburse funds to CBI for students actually attending UECC and  
21 Mesa. A portion of those funds then would be paid by CBI to UECC  
22 and Mesa.

23       Defendant Wong and coconspirators Williams and H.S.Y. used  
24 Global to conceal the payment of Education Grant funds from CBI  
25 to UECC by falsely making it appear that Global and UECC were  
26 providing services to CBI. Coconspirator Diaz and others created  
27  
28

1 false invoices to make it appear that Global and UECC were  
2 providing services to CBI.

3 On January 31, 2000, defendant Wong sent a memo to  
4 coconspirator Diaz requesting a report about, among other things,  
5 the amounts of Pell Grant funds paid to CBI and UECC in 1999, and  
6 requesting various other information about payments made to, and  
7 received by CBI, from UECC and Global. That same day,  
8 coconspirator Diaz filled out a response to defendant Wong's memo  
9 in which coconspirator Diaz reported to defendant Wong, among  
10 other things, the amounts of Pell Grant funds paid to CBI and  
11 UECC in 1999, and provided other information about payments made  
12 to, and received by CBI, from UECC and Global.

13 On June 15, 2000, coconspirator Nichols sent a memo to  
14 defendant Wong and coconspirator Williams concerning, among other  
15 things, how to allocate Education Grant funds to Global.

16 Defendant Wong and coconspirators Williams and Nichols used  
17 Max Affiliates to conceal the payment of Education Grant funds  
18 from CBI to Mesa by falsely making it appear that Max Affiliates  
19 and Mesa were providing services to CBI. Coconspirator Diaz and  
20 others created false invoices to make it appear that Max  
21 Affiliates and Mesa were providing services to CBI.

22 Coconspirators H.S.Y. and Nichols made payments to defendant  
23 Wong and CBI. The amount of the payments was based on the amount  
24 of Education Grant funds paid to CBI for UECC and Mesa students  
25 and was calculated using rates previously agreed upon by  
26 defendant Wong and coconspirators H.S.Y., Nichols, and Williams.

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1 As a result of the conspiracy, CBI received from the DOE at  
2 least \$2,158,844 in Education Grant funds on behalf students  
3 actually attending UECC and \$739,049 in Education Grant funds on  
4 behalf of students actually attending Mesa.

III.

## DISCUSSION

A. THE GOVERNMENT CALCULATES THE SENTENCING GUIDELINES TO INCLUDE AN ADDITIONAL DOWNWARD DEPARTURE OF TWO OFFENSE LEVELS FOR OVERSTATEMENT OF LOSS

9       Defendant Wong has not claimed any error to the sentencing  
10 factors driving the PSR's calculation of his offense level,  
11 including the loss to the government of \$2,897,893. The  
12 government, which is bound by its plea agreement with defendant  
13 Wong not to seek an adjustment for "abuse of trust" as applied by  
14 the PSR, concurs in the PSR's remaining sentencing calculations.

15 In addition, the government has agreed as part of the plea  
16 agreement in this case not to oppose a request by defendant Wong  
17 for a two-level downward departure on the basis that the loss  
18 amount overstates the seriousness of the offense for the  
19 following reason: While the students for whom defendant Wong and  
20 his coconspirators fraudulently obtained Department of Education  
21 grant funding were not students at CBI, the students were  
22 actually enrolled at another educational institution and  
23 receiving instruction at that institution.

24 Accordingly, the guidelines range is between 21 and 27  
25 months, based on a total offense level of 16 and a Criminal  
26 History Category of I.

## B. APPLICATION OF THE STATUTORY SENTENCING FACTORS

The government addresses here only the most salient of the sentencing factors under 18 U.S.C. § 3553(a).

4       1. The nature and circumstance of the offense and the  
5 history and characteristics of the defendant (§ 3553(a)(1)). In  
6 this case, defendant Wong committed a crime that caused almost  
7 three million dollars in loss and involved years of repeated  
8 criminal activity. Defendant was the owner of one of the  
9 businesses that received the student aid payments. The  
10 egregiousness of this conduct, weighed against the lack of a  
11 criminal history before or after the offense, is adequately  
12 considered in the sentencing guidelines calculation.

13       2. Reflecting the seriousness of the offense, promoting  
14 respect for the law, and to provide just punishment for the  
15 offense. (§ 3553(a)(2)(A)). If there was any doubt about the  
16 seriousness of fraud against the government, there is no longer,  
17 given the nation's deepening budget deficits and recession.

18       3. General Deterrence (§ 3553(a)(2)(B)). A custodial  
19 sentence in this case will serve as a deterrent in the student  
20 aid business, a reminder that fraud has serious consequences.

21       4. Preventing Unwarranted Sentencing Disparities Between  
22 Defendants (§ 3553(a)(6)). The Court is required to take into  
23 consideration preventing unwarranted sentencing disparities  
24 between defendants. In this regard, the Court's sentencing last  
25 year of defendant Wong's co-conspirator, Williams, to a term of 5  
26 months imprisonment and 5 months home confinement may now be a

1 factor favorable to defendant. Nonetheless, defendant Wong did  
2 not accept responsibility in the same timely manner as  
3 coconspirator Williams, who pleaded early and promptly to an  
4 information, rather than forcing the government to indict her and  
5 to begin preparations for trial. Moreover, the sentencing  
6 guidelines that the Court is required to consider is the typical  
7 and appropriate manner in which to minimize sentencing  
8 disparities between defendants generally who commit the same type  
9 of fraud, and so the Court should not depart too dramatically  
10 from the resulting range. Viewed in light of these  
11 considerations of guidelines equity, the Court imposed on  
12 coconspirator Williams a most lenient sentence, and should not  
13 now feel obligated to view coconspirator Williams' sentence as  
14 the sole benchmark against which the judge defendant Wong --  
15 rather than the general class of fraud defendants with similar  
16 calculations under the sentencing guidelines.

17 C. DEFENDANT WONG'S REQUESTS FOR DEPARTURES OR LENIENCE LACK A  
FACTUAL BASIS IN THE RECORD, OR DO NOT CONSTITUTE  
EXCEPTIONAL CIRCUMSTANCES

19 In defendant Wong's sentencing position, he lists numerous  
20 grounds for this Court to depart from the sentencing guidelines  
21 or otherwise to be lenient in imposing sentence. Defendant  
22 Wong's arguments lack a factual basis in the record, and/or do  
23 not constitute exceptional circumstances.

24 1. "Loss of Time Between Crimes"

25 Under a caption heading "Loss of Time Between Crimes,"  
26 defendant Wong cites to various cases in support of departures,  
27

1 but the relationship between the facts of this case and the  
2 departures recognized in those cases is not apparent.

## 2. Aberrant Behavior

4 Defendant Wong suggests that his conduct in this case  
5 constitutes "aberrant behavior," a possible ground for departure  
6 recognized in many cases. However, defendant Wong's conduct in  
7 the scheme to which he pleaded guilty defies characterization as  
8 "aberrant behavior" because the individual fraudulent acts  
9 contained in defendant Wong's factual basis spanned years and  
10 involved the creation of many types of fraudulent documents.

3. "To Enable Defendant To Make Restitution"

12 Under a caption heading "To Enable Defendant To Make  
13 Restitution" defendant Wong cites to various cases that do not,  
14 in the end, appear to support the caption heading's proposition  
15 or to relate in any way to the facts of this case. In any event,  
16 there is no reason to believe that defendant Wong's service of a  
17 modest prison term would render him unable to make the  
18 restitution ordinarily expected of convicted fraud defendants.  
19 To the contrary, defendant Wong has a net worth of over \$594,000  
20 consisting of IRA accounts and real estate (PSR ¶ 103-13), and  
21 what he calls in his brief an "excellent employment history."

#### 4. Excellent Employment History

23 Defendant Wong cites his "excellent employment history" as a  
24 ground for departure. This may be true -- setting aside his  
25 conduct of affairs at CBI at issue in this case. However, even  
26 if true, this would not constitute "exceptional circumstances"

1 but, rather, simply the prologue to his being in a position to  
2 use CBI to defraud the government out of nearly \$3 million in  
3 federal education program money.

4       **5. "Defendant Responsible for Only Part of Loss"**

5       Defendant Wong seeks a departure based on an argument that  
6 he is responsible for only part of the loss. In fact, in this  
7 case, defendant Wong was at the very center of the fraud as the  
8 owner of CBI. He was responsible for all losses. He is  
9 fortunate not to have been assessed a leadership role adjustment  
10 on the basis that there were, in fact, multiple others culpable  
11 just as much as he was in the scheme.

12       **6. "Defendant Subject to Abuse In Prison"**

13       Defendant Wong suggests he would be subject to abuse in  
14 prison, but there is no factual basis stated for this argument.  
15 Certainly, defendant Wong is not "notorious," as was the  
16 defendant in the cited case.

17       **7. Totality of the Circumstances and Sua Sponte Departures**

18       Defendant cites two more grounds for departure in the  
19 totality of the circumstances and the district court's inherent  
20 power to depart sua sponte. These arguments cite no factual  
21 basis, although the government of course acknowledges that this  
22 Court has the discretion to impose any sentence within the  
23 statutory maximum based on its assessment of the statutory  
24 sentencing factors in 18 U.S.C. § 3553(a).

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1 IV.  
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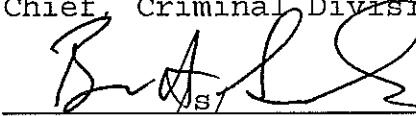
3 CONCLUSION  
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5 For the foregoing reasons, the government respectfully  
6 requests that the Court impose a sentence at the low end of the  
7 guidelines range, i.e., 21 months imprisonment.  
8

9 DATED: November 10, 2008 Respectfully submitted,  
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